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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,986	02/09/2004	Wilfried Kolbe	344/1/070	9600
170	7590	09/08/2005	EXAMINER	
RICHARD M. GOLDBERG 25 EAST SALEM STREET SUITE 419 HACKENSACK, NJ 07601			MORRISON, THOMAS A	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/774,986	KOLBE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thomas A. Morrison	3653	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 10-12 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 6, 8 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02/09/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-8 and 10-17 of Group II in the reply filed on 08/12/2005 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-5, 7, 10-12 and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the tube section" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Also, it is unclear which tube section is referred to in claim 3. Is it one of the previously recited tube sections in claim 1?

Claim 4 recites the limitation "the upper and lower conveyor belts" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the upper conveyor belt" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the lower conveyor belt" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 7, it is unclear what is meant by the recited "tear-off head".

Claim 10 recites the limitation "the tube section" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Also, it is unclear which tube section is referred to in claim 10. Is it one of the previously recited tube sections in claims 1 and 2?

Claim 11 recites the limitation "the upper and lower conveyor belts" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the upper and lower conveyor belts" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-5 and 11, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,341,698 (Wursthorn).

Regarding claim 1, Figs. 1-7 show a device (10) for stacking tube sections for producing bags, including a transporting facility which supplies items to a stacking station (182 or 192) the transporting facility including

an upper transport (including 132),

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a lower transport (including 92 and 72) formed in a region of the stacking station (182) by two endless conveyor belts (92 in Fig. 2), which revolve above the stacking station (182, 192) outside of lateral edges of the items (Fig. 2), and

at least two cross members (72) which connect the two endless conveyor belts (92 in Fig. 2) and which are disposed with uniform spacings corresponding to spacings between leading edges of consecutively supplied items. Two of the cross members (72) can be selected so that such selected cross members correspond to spacings between leading edges of consecutively supplied items. See, e.g., Figs. 4K-4L for exemplary spacings between leading edges of consecutively supplied items. The recitation "for stacking tube sections for producing bags" in claim 1 is merely a statement of intended use and has not been given patentable weight.

Regarding claim 2, Fig. 1 shows that downstream ends (near 136 and near 168) of the lower transport and the upper transport are offset relative to one another in a longitudinal direction thereof.

Regarding claims 4 and 11, Figs. 1 and column 6, lines 5-19 disclose that the transporting facility has an inlet section, in which a vertical distance between the upper and lower conveyor belts (132 and 92) decreases in a transporting direction (i.e., direction from right to left in Fig. 1).

Regarding claim 5, Fig. 1 and column 6, lines 5-19 disclose a length-adjustable clamping roller (136) in the inlet section, which deflects the upper conveyor belt (132)

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against the lower conveyor belt (92), in order to take hold of the leading edge of an item, which has been supplied.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,431,386 (Blaser).

Regarding claim 1, Figs. 1 shows a device for stacking tube sections for producing bags, including a transporting facility which supplies items to a stacking station (near 2) the transporting facility including

an upper transport (A),

a lower transport (B) formed in a region of the stacking station (near 2) by two endless conveyor belts (6 as described in column 4, lines 38-44), which revolve above the stacking station (near 2) outside of lateral edges of the items, and

at least two cross members (7) which connect the two endless conveyor belts (6 as described in column 4, lines 38-44) and which are disposed with uniform spacings corresponding to spacings between leading edges of consecutively supplied items. See, e.g., Fig. 1 for exemplary spacings between leading edges of consecutively supplied items. The recitation "for stacking tube sections for producing bags" in claim 1 is merely a statement of intended use and has not been given patentable weight.

Regarding claim 2, Fig. 1 shows that downstream ends (left-hand side of Fig. 1) of the lower transport (B) and the upper transport (A) are offset relative to one another in a longitudinal direction thereof.

***Allowable Subject Matter***

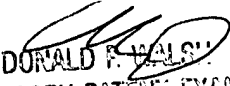
5. Claims 6, 8 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Morrison whose telephone number is (571) 272-7221. The examiner can normally be reached on M-F, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (571) 272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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